

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

ORDER

M/s. Hemraj Surajmal & ors. Vs. M/s. Heera Chand Jeevan
Chand & another

S.B.CIVIL WRIT PETITION NO.196/2006

Date of order : 12th May 2006

PRESENT

HON'BLE MR.JUTICE DINESH MAHESHWARI

Mr.Ajay Vyas for the petitioners

BY THE COURT:

This writ petition is directed against the order dated 24th August 2005 passed by the learned trial court on defendants' application purported to be under Order 18 Rule 17 read with Section 151 of the Code of Civil Procedure ('CPC').

The petitioners are defending a suit for money recovery filed by the plaintiff-respondent No.1. After framing of issues, the matter was posted for evidence and it is borne out from the material placed on record that plaintiff's witness Narain Das has been examined as PW-3. His cross-examination commencing from 28th April 2003 was concluded on 22nd July 2005. The defendant No.2 submitted the application on 5th August 2005 seeking recalling of the said witness Narain Das with the submissions that on the previous date of

hearing, he could not attend the court on account of his indisposition and could not extend the requisite instructions to his counsel for cross-examination and, therefore, material and important questions could not be put in cross-examination and for that purpose the witness is required to be called back for further cross-examination.

The learned trial court having regard to all the facts and circumstances of the case and after thorough consideration of the entire proceedings in the suit found that the said witness was extensively cross-examined by the counsel appearing for the defendant and on the earlier three occasions when witness was examined in the court, presence of the defendant is not borne out on record and, therefore, it cannot be said that his presence was necessary or that earlier cross-examination was carried out and conducted only in his presence. The learned trial court also observed that no such prayer was made by the counsel that cross-examination was to be carried out only in the presence of the defendant; and a witness cannot be recalled for the purpose of filling up lacunae in cross-examination. It was also observed that the said witness Narain Das has been cross-examined to the maximum extent and it cannot be said that any part of the matter has been left untouched or that there has been any laxity on the part of the defendant in cross-examining the said witness.

Having perused the statements of said witness Narain Das placed on record as Annexures 3,4 and 5 in this writ petition, this

Court is satisfied that the application dated 5th August 2005 moved by the petitioners cannot be said to be bona fide and seems to be only an attempt to somehow prolong the trial of the suit. The said witness has been thoroughly and extensively cross-examined and the ground suggested by the petitioners seeking recalling of the said witness that on the earlier occasion, the defendant No.2 could not attend the dates of hearing on account of his indisposition does not appear to be a valid or genuine ground. Even otherwise, the defendants have already engaged a counsel to plead their case and to act on their behalf and the said counsel having cross-examined the witness thoroughly and extensively, there does not appear to be any justification for the petitioners seeking recalling of the said witness. The application has rightly been rejected. No ground for interference under Article 227 of the Constitution of India is made out.

The writ petition turns out to be absolutely bereft of substance and is, therefore, dismissed summarily.

A copy of this order be sent to the trial court.

(DINESH MAHESHWARI),J.

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